

BEFORE DENISE JUNEAU, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF MONTANA

LAURIE A. JAKOBER)	
)	
Appellant,)	OSPI 327-11
)	
vs.)	DECISION AND ORDER
)	
DARBY PUBLIC SCHOOLS, DISTRICT #9,)	
et al.)	
)	
Respondents.)	
)	

Having reviewed the record and considered Appellant's brief (Respondents did not file a Response), the Superintendent of Public Instruction issues the following decision and order:

DECISION AND ORDER

The county superintendent did not err in determining "this is not a contested case and there is no basis for the County Superintendent to have jurisdiction."

PROCEDURAL HISTORY

Appellant filed a complaint with the District Superintendent of Darby Public Schools, Tim Bronk, on December 13, 2010. Her complaint consisted of a variety of issues she wished to discuss with the Superintendent: application of veteran's preference in hiring; lesson plans and content standards; allegations related to a student council field trip; bullying and harassment by students and teachers; and management of the Darby School Excellence Fund. Some, if not all, of the issues raised in the complaint had been brought to the attention of district administrators on prior occasions.

Mr. Bronk replied to Appellant on January 11, 2011, stating he did not find merit to the complaints and the issues had either been dealt with or were unsubstantiated.

Appellant alleges that the district superintendent did not adequately respond to her complaint(s) and therefore she attempted to bring the matter before the Darby School Board but was not allowed to do so.

On February 22, 2011, Appellant filed a complaint/appeal with the County Superintendent of Ravalli County, Ernie Jean. The Ravalli County Superintendent removed himself from the appeal on March 18, 2011, citing a conflict of interest. Marsha Davis, Lewis and Clark County Superintendent assumed jurisdiction and on March 29, 2011 issued an order dismissing the complaint/appeal for lack of jurisdiction.

Appellant filed a Notice of Appeal to the Superintendent of Public Instruction on April 28, 2011.

STANDARD OF REVIEW AND AUTHORITY

The Superintendent of Public Instruction's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana legislature in § 2-4-704, MCA and adopted by the State Superintendent in ARM 10.6.125.

The Superintendent of Public Instruction may reverse or modify a county superintendent's decision if substantial rights of the District have been prejudiced because the conclusions of law and order are (a) in violation of constitutional or statutory provision; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. ARM 10.6.125(4).

A county superintendent's conclusion of law is reviewed to determine if the interpretation of law is correct. *Baldrige v Board of Trustees*, 264 Mont. 199, 870 P.2d 711 (1994).

CONCLUSIONS OF LAW AND OPINION

The issue on appeal is whether the County Superintendent correctly determined she did not have jurisdiction to hear this appeal.

A person aggrieved by the final decision of the board of trustees in a contested case may appeal the decision to the county superintendent. ARM 10.6.103(1).

Appellant admits that there was no decision issued by the Darby Board of Trustees in this matter, but nonetheless appealed to the County Superintendent who determined there was no jurisdiction for the appeal. In the District's Brief in Support of its Motion to Dismiss filed with the County Superintendent, the district claimed there is no contested case alleged in the complaints raised by Appellant. The district also alleged the Appellant did not timely adhere to the district complaint policy when filing her various complaints with the district superintendent.

The county superintendent has authority and jurisdiction to “hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county.” Section 20-3-210, MCA. A contested case is “any proceeding in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing.” ARM 10.6.102(1).

Even if the Board had rendered a decision on the issues raised by Appellant, none of these issues rise to the level of a contested case because they do not require a determination of legal rights, duties or privileges of a party after an opportunity for hearing.

The County Superintendent correctly determined that she did not have jurisdiction over the issues appealed. The decision and Order to Dismiss Appellant Jakober’s appeal is affirmed.

DATED this 21st day of July, 2011.

/s/ Denise Juneau
Denise Juneau,
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 22nd day of July, 2011, I caused a true and exact copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

**Laurie A. Jakober
121 Patti Lane
Darby, MT 59829**

**Tim Bronk
District Superintendent
Darby Public School District #9
209 School Drive
Darby, MT 59829**

**Marsha Davis
Acting Ravalli County Superintendent of Schools
316 N Park Avenue, Room 221
Helena, MT 59623**

/s/ Beverly Marlow
Beverly Marlow
OPI Paralegal